

**REMARKS****Summary of the Office Action**

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

Claims 1-2 and 7-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson (U.S. Patent No. 7,072,846) (hereinafter "Robinson") in view of Jacobi et al. (U.S. Pre-Grant Publication No. 2006/0195362) (hereinafter "Jacobi").

Claims 3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and further in view of Seto et al. (U.S. Publication No. 2002/0041692) (hereinafter "Seto").

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and in view of Ward et al. (U.S. Patent No. 6,526,411) (hereinafter "Ward").

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and further in view of Cluts (U.S. Patent No. 5,616,876) (hereinafter "Cluts").

**Summary of the Response to the Office Action**

Applicants have amended each of independent claims 1, 7 and 8, and dependent claim 2, and added new dependent claims 9-11 to differently describe embodiments of the disclosure of the instant application's specification and/or to improve the form of the claims. Accordingly, claims 1-11 are currently pending for consideration.

**Rejection under 35 U.S.C. § 112, second paragraph**

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicants have amended claim 2 in accordance with helpful suggestions provided by the Examiner at page 2, section 3 of the Final Office Action. Accordingly, Applicants respectfully submit that claim 2, as amended, fully complies with the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 112, second paragraph be withdrawn.

**Rejections under 35 U.S.C. § 103(a)**

Claims 1-2 and 7-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi. Claims 3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and further in view of Seto. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and further in view of Ward. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Jacobi and further in view of Cluts. Each of independent claims 1, 7 and 8 have been newly-amended to differently describe embodiments of the disclosure of the instant application. To the extent that these rejections might be deemed to still apply to the claims as newly-amended, they are respectfully traversed for at least the following reasons.

Applicants respectfully submit that neither of Robinson and Jacobi, whether taken singly or combined, teach or suggest the combination of features described in independent claim 1 of the instant application including at least the newly-described “comparing step,” “calculating step” and “selecting step.” Applicants respectfully submit that the amendments to independent

claim 1 are supported, for example, by the description at page 11, line 9 to page 12, line 5 of the specification of the instant application.

Independent claims 7 and 8 have also been newly-amended to include similar features as newly-amended independent claim 1 in these regards. Accordingly, similar arguments as asserted above with regard to newly-amended independent claim 1 of the instant application also apply to newly-amended independent claims 7 and 8.

As a result, for at least the foregoing reasons, Applicants respectfully submit that neither of Robinson and Jacobi, whether taken singly or combined, teach or suggest the combinations of features described in newly-amended independent claims 1, 7 and 8, respectively, of the instant application.

Accordingly, Applicants respectfully assert that the rejections under 35 U.S.C. § 103(a) should be withdrawn because neither of Robinson and Jacobi, whether taken singly or combined, teach or suggest each feature of independent claim 1, 7 or 8. MPEP § 2143.03 instructs that “[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 409 F.2d 981, 180 USPQ 580 (CCPA 1974).”

Furthermore, Applicants respectfully assert that dependent claims 2-6 are allowable at least because of their dependence from claim 1 and the reasons set forth above. The additionally applied reference to Seto, with regard to dependent claims 3 and 5, fails to cure the deficiencies of Robinson and Jacobi, as discussed above. The additionally applied reference to Ward, with regard to dependent claim 4, fails to cure the deficiencies of Robinson and Jacobi, as discussed above. The additionally applied reference to Cluts, with regard to dependent claim 6, fails to cure the deficiencies of Robinson and Jacobi, as discussed above.

Applicants have now presented new dependent claims 9-11 in order to further describe "the musical characteristic" as initially described in the newly-amended independent claims. Applicants respectfully submit that these newly-presented dependent claims are allowable at least because of their dependence on newly-amended independent claim 1, 7 or 8, and the reasons discussed previously.

### **CONCLUSION**

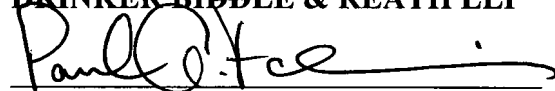
In view of the foregoing amendments and remarks, withdrawal of the rejections and allowance of all pending claims are earnestly solicited. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

**~~DRINKER BIDDLE &~~ REATH LLP**

By:



Paul A. Fournier

Reg. No. 41,023

Dated: May 29, 2007

**Customer No. 055694**

**DRINKER BIDDLE & REATH LLP**

1500 K Street, N.W., Suite 1100

Washington, DC 20005-1209

Tel.: (202) 842-8800; Fax: (202) 842-8465